

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CSR 8264-E
MCC GEORGIA LLC)	CSR 8266-E
)	CSR 8278-E
Petitions for Determination of Effective)	
Competition in Eleven Communities in Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: May 19, 2010

Released: May 19, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. MCC Georgia LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Petitioner alleges that its cable systems serving the communities listed on Attachment B and hereinafter referred to as the Attachment B Communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Community listed on Attachment C and hereinafter referred to as the Attachment C Community because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹ See 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(1, 2).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁶ This test is referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that the Attachment B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient citations and references to the DBS providers’ web pages and other media available in the Attachment B Communities to support its assertion that potential customers in those Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petition with citations to the channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Attachment B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Attachment B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Attachment B Communities by purchasing a

⁶ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ 47 C.F.R. § 76.905(b)(2)(i).

⁸ *See* Petition in CSR 8264-E at 3-5.

⁹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹⁰ 47 C.F.R. § 76.905(e)(2).

¹¹ *See* 47 C.F.R. § 76.905(g). *See also* Petition in CSR 8266-E at 5-6.

¹² *See* Petition in CSR 8278-E at 6.

¹³ *See* Petition in CSR 8264-E at 6-7.

¹⁴ *Id.* at 7 n.22 & attached Declaration of Edward Pardini, Petitioner’s Divisional Senior Vice President, at ¶ 2 (dated Dec. 1, 2009).

subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Attachment B Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Attachment B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Attachment B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Attachment B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area. This test is referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Attachment C Community. Therefore, the low penetration test is also satisfied as to the Attachment C Community.

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by MCC Georgia LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁵ Petition in CSR 8266-E at 7-8.

¹⁶ Petition in CSR 8278-E at Exh. C.

¹⁷ 47 U.S.C. § 543(l)(1)(A).

¹⁸ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8264-E, 8266-E, 8278-E

COMMUNITIES SERVED BY MCC GEORGIA LLC

Communities	CUID(s)
CSR 8264-E	
Valdosta	GA0011
Remerton	GA0193
Hahira	GA0448
Brooks	GA0374
CSR 8266-E	
Dawson	GA0245
Poulan	GA0547
Terrell	GA0727
CSR 8278-E	
Adel	GA0037
Lakeland	GA0265
Nashville	GA0038
Sparks	GA0039

ATTACHMENT B

CSRs 8264-E, 8266-E, 8278-E

COMMUNITIES SERVED BY MCC GEORGIA LLC

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8264-E				
Valdosta	GA0011	16.85%	16692	2812
Remerton	GA0193	17.05%	440	75
Hahira	GA0448	29.24%	643	188
CSR 8266-E				
Dawson	GA0245	15.3%	1791	274
Poulan	GA0547	15.62%	365	57
Terrell	GA0727	21.21%	4002	849
CSR 8278-E				
Adel	GA0037	22.52%	1958	441
Lakeland	GA0265	22.67%	966	219
Nashville	GA0038	16.09%	1864	300
Sparks	GA0039	23.14%	644	149

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 8264-E

COMMUNITY SERVED BY MCC GEORGIA LLC

Community	CUID(s)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Brooks	GA0374	6155	586	9.52%